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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ISIDRO ROJAS MOLINA,

Defendant and Appellant.

A120529

(Sonoma County  
Super. Ct. No. SCR 486118)

After a jury trial, defendant Isidro Rojas Molina was convicted of three felony sexual offenses, and sentenced to an aggregate term of eight years and four months in state prison. He contends the trial court erred in admitting statements he made to police in a jailhouse interview in the early morning hours following the crime. We disagree, and conclude Molina's statements were properly admitted because they were not the result of police coercion, and were obtained when Molina was not under arrest and was free to leave or terminate the interview. Accordingly, we affirm the judgment.

**FACTUAL AND PROCEDURAL BACKGROUND**

The sole issue before us is whether the trial court erred in admitting Molina's statements obtained in a jailhouse interview. Accordingly, we will discuss only those facts relevant to resolving the issue.

On the evening of May 5, 2006, the victim was at a party with her girlfriend and Molina was there. The victim's girlfriend told her that Molina had molested her in the past. Others at the party confronted Molina about the incident involving the victim's girlfriend. He denied it, and then sought to explain the incident to the victim, who agreed

to hear his side of the story. The victim and Molina walked to a bridge. Underneath the bridge on a dirt path, Molina sexually assaulted her. She escaped and reported the incident to her friends and then to the police. In his statements to the police, Molina claimed that any sexual contact he had with the victim was consensual.

Before trial, Molina moved in limine to exclude any statements he made to the police. (Evid. Code, § 402.) He argued that his statements were elicited during a custodial interrogation that should have been preceded by an advisement of his rights under *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*).

Detective Ken Konopa testified that in the early morning hours of May 6, 2006, he assisted Deputy Sheriff Melanie Clarkson in the investigation of a possible sexual assault. The uniformed officers drove in separate marked patrol cars to Molina's home because they suspected he was involved in the crime. Since the officers did not have enough information to arrest Molina, they agreed that they would try to make consensual contact with him and get Molina to voluntarily agree to go to the sheriff's department.

The officers were met at the front door by a woman who said her name was Heather. She had gotten into an argument that night with Molina and she was not sure if he was home. At the officers' request, Heather allowed them to come into the house to look for Molina, and they found him sleeping on a couch in the living room. Clarkson approached Molina and talked to him, saying, "Isidro, wake up." Clarkson did not otherwise touch or shake Molina to waken him. Molina sat up. He was wearing black jeans and a heavy white jacket with dried leaves on the back of it. The officers verified Molina's identification from his Mexican driver's license. The officers told Molina that they understood he was involved in an altercation with a woman earlier that night and they hoped Molina would come to the sheriff's department to talk about it. The officers spoke to Molina in casual tones of voice, and were standing about five to 10 feet away from him. Konopa was standing more behind Molina and Clarkson was more in front of him. Molina agreed to go with the officers.

Konopa and Molina left the house, while Clarkson stayed at the residence talking with Heather. Molina followed Konopa to the detective's patrol car. Molina walked with

his hands at his side. Konopa did not tell Molina to put his hands behind his back, but told Molina that it was procedure to search any person for weapons before allowing him to get in a patrol car. Molina consented to the search, which revealed no weapons. Konopa did not search Molina before leaving the house, even though his jacket could have hidden a weapon, because he wanted Molina to voluntarily agree to go to the sheriff's department.

After Konopa searched him, Molina got into the back seat. Konopa closed the car door and drove to the sheriff's department. Molina could not open the car door from the inside. Had Molina asked Konopa to open the door, the detective would have let him out, but Molina did not ask. During the 30-minute ride, Konopa and Molina did not talk.

When they arrived at the sheriff's department, Konopa drove through the secured back gate, which was a common way into the building. Konopa unlocked the car door, and Molina, who was not handcuffed, followed the detective into an elevator, up to the second floor, and into an interview room. Even though Molina understood and spoke English, Konopa told Molina that a Spanish-speaking detective was going to talk to him. Konopa then left Molina in the room and closed, but did not lock, the door. There is an alarm system connected to the door, but it was not activated, and Molina was free to leave. It was a common practice to arrange for a Spanish-speaking officer to speak with a witness or victim who was more comfortable speaking Spanish, and the witness or victim would typically wait inside the interview room.

Detective Ruben Martinez was informed of a rape incident and that his assistance was needed to interview a Spanish-speaking suspect. At the sheriff's department, Martinez, who was in plain clothes, learned that Molina agreed to be interviewed. Martinez was unarmed inside the interview room, and sat about two or three feet from Molina, who was also seated. When the interview began Martinez asked Molina if he had volunteered to be interviewed. Molina said yes. Martinez then told Molina that he was not under arrest, and the detective "kind of showed him the door, the direction of the door, which was unlocked but closed." Martinez could not recall if he said anything

about the door. It was his usual practice to just point in the direction of the door when he admonished a witness at the beginning of an interview.

Martinez began with general questions seeking Molina's name and date of birth, and then asked Molina to tell him what happened earlier in the evening. Molina explained what had occurred. After Molina finished, Martinez asked him if he could wait. Molina said yes, and Martinez left the room. Martinez told Konopa what Molina had said during the interview, and Konopa replied that the victim identified Molina in a photo lineup. At that point, Martinez felt he had enough information to detain Molina.

When Martinez returned to the interview room, he again told Molina that he was not under arrest. Molina said he understood and reaffirmed that he was there voluntarily. "As a ploy," Martinez told Molina that a witness had seen him under the bridge. In response, Molina admitted that he was there, and gave a second version of the evening's events. When Martinez said he thought Molina was lying, he changed his story for a third time. Then, Martinez said he had DNA evidence. He explained to Molina "how DNA worked," and said he was going to have the victim examined and that a detective would swab Molina's hands for DNA. Molina responded by recounting another version of the evening's events, changing his story for the fourth time.

The interview lasted about one hour, and Martinez questioned Molina using a generally calm tone of voice that he described as similar to the voice that he used when testifying. Martinez did not threaten Molina for any lack of cooperation, nor did he promise Molina leniency if Molina cooperated and was truthful. Martinez never stood up or used his body to intimidate Molina, and he never yelled at him. When Martinez thought Molina was lying, he calmly told him so. Molina would repeat his version of the events and add information. Molina never said that he wanted to leave the interview, and he never said that he wanted to speak to a lawyer.<sup>1</sup>

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<sup>1</sup> Defense counsel asked Martinez about a portion of the interview in which Martinez told Molina on two occasions "don't go." Martinez explained that Molina was not trying to leave the interview. Instead, Martinez's statements were in response to Molina's attempt to "tell" his version of the events. The detective was telling Molina not

When Molina finished providing his fourth version of the events, Martinez left the interview room. Martinez briefed Detective Focha on his interview with Molina. Focha told Martinez that she had interviewed the victim who identified Molina, and that she was going to arrest him. Martinez went back into the interview room, and told Molina that he was under arrest. Molina looked surprised and said that he did not understand why he was being arrested because he had voluntarily come to the station for the interview.

The trial court denied Molina's motion to exclude his statements, and explained its reasons as follows: "[B]ased on the totality of the circumstances . . . Miranda was not required. There is certainly some indicia that there's a custodial situation. . . . I think [counsel] brought up the locked gate and locked back of the patrol car. But I think when Mr. Molina was asked whether he would come to the police station, he followed the officer to the car, he followed the officer to the elevator and was told by Detective Martinez he was not under arrest. He volunteered. And Detective Martinez indicated the manner in which the interview was conducted, the length of the interview being an hour."

### **DISCUSSION**

In order to safeguard the Fifth Amendment privilege against self-incrimination, individuals interrogated while in police custody must be told that they have the right to remain silent, that anything they say may be used against them in court, and that they are entitled to the presence of an attorney, either retained or appointed, during police interrogation. (*Thompson v. Keohane* (1995) 516 U.S. 99, 107 [citing *Miranda, supra*, 384 U.S. at p. 467].) Custodial interrogations occur when persons questioned by police have been deprived of their freedom of action in a significant way. (*Thompson, supra* at p. 107.) "Absent 'custodial interrogation,' *Miranda* simply does not come into play." (*People v. Mickey* (1991) 54 Cal.3d 612, 648.)

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to go in that direction with his story, but Molina interrupted him. Although the transcript was not before the court at the time of the pretrial hearing, our review of the transcript supports the detective's testimony and does not support a finding that Molina was attempting to leave the interview room.

Here, Molina argues the trial court should have excluded his statements made during the jailhouse interview because he was not advised of his *Miranda* rights before or during the interview. But our independent review of the record leads us to conclude the interview did not occur while Molina was in custody.

Whether Detective Martinez was required to provide *Miranda* warnings “presents a mixed question of law and fact.” (*People v. Pilster* (2006) 138 Cal.App.4th 1395, 1403.) “ ‘Two discrete inquiries are essential to the determination: first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave. Once the scene is . . . reconstructed, the court must apply an objective test to resolve “the ultimate inquiry”: “[w]as there a ‘formal arrest or restraint on freedom of movement’ of the degree associated with a formal arrest.” [Citations.] The first inquiry, all agree, is distinctly factual. . . . The second inquiry, however, calls for application of the controlling legal standard to the historical facts. . . .’ [As a reviewing court,] we apply a deferential substantial evidence standard [citation] to the trial court’s conclusions regarding ‘ “basic, primary, or historical facts: facts ‘in the sense of recital of external events, and the credibility of their narrators. . . .’ ” ’ [Citation.] Having determined the propriety of the court’s findings under that standard, we independently decide whether ‘a reasonable person [would] have felt he or she was not at liberty to terminate the interrogation and leave.’ ” (*People v. Ochoa* (1998) 19 Cal.4th 353, 401-402, quoting from *Thompson v. Keohane*, *supra*, 516 U.S. at pp. 110, 112-113.) We also “apply federal standards in reviewing [Molina’s] claim that the challenged statements were elicited from him in violation of *Miranda*.” (*People v. Bradford* (1997) 14 Cal.4th 1005, 1032-1033.)

The federal courts have “identified five factors relevant to the custody determination: ‘(1) the language used to summon the individual; (2) the extent to which the defendant is confronted with evidence of guilt; (3) the physical surroundings of the interrogation; (4) the duration of the detention; and (5) the degree of pressure applied to detain the individual.’ [Citation.] These considerations are not exhaustive; ‘[o]ther

factors may also be pertinent to, and even dispositive of, the ultimate determination whether a reasonable person would have believed he could freely walk away from the interrogators.’ ” (*U.S. v. Bassignani* (9th Cir. 2009) 560 F.3d 989, 994.)

Molina asks that we consider what happened before his arrival at the sheriff’s department in reaching our determination that he was subject to custodial interrogation. He contends that the manner in which the two uniformed officers entered his home in the middle of the night, surrounded him front and back while he was sleeping, and then purposefully woke him up suggested that he had no right to refuse their request that he go with them. He argues that in these circumstances, the officers’ “casual” speaking tone lost any significance because their actions already conveyed both a sense of immediacy and a strong show of authority. He also relies upon facts that he was patsearched for weapons after “summoned out of his house,” and placed in the back seat of a marked police car where he was essentially confined until Konopa opened the car door at the sheriff’s department.

However, when we consider whether Molina was “in custody,” we focus on the “ ‘circumstances surrounding the *interrogation*,’ ” not those that occurred in Molina’s home or in the patrol car. (*U.S. v. Crawford* (9th Cir. 2004) 372 F.3d 1048, 1059-1060.) To the extent Molina relies upon those events, we conclude that “[w]hat took place in [Molina’s] home [and in the patrol car] did not transform the later events at the [sheriff’s department] into custodial interrogation.” (*Id.* at p. 1060.)

The record contains substantial evidence that supports the trial court’s implicit finding that Molina voluntarily agreed to go to the sheriff’s department. Molina was not roused out of bed when the officers arrived. He was sleeping on the living room couch fully dressed in a heavy jacket and jeans. The officers did not shake or otherwise touch Molina. When they spoke to him, Molina apparently sat up without hesitation. When Molina was awake, the officers confirmed his identity and asked if he would agree to discuss an altercation that had occurred earlier that evening. The officers did not have their guns drawn and were standing about five to 10 feet away from Molina. Although the officers told Molina the reason for their presence, they did not tell him they suspected

him of committing a crime, or that he was under arrest. Nor did the officers threaten him or otherwise speak to him in a manner indicating that he had no choice but to accompany them to the sheriff's department.

The evidence does not support a finding that the officers treated Molina in a way that would lead a reasonable person to believe that he was not free to refuse the officers' request to go to the sheriff's department. Instead, the evidence shows that Molina voluntarily agreed to go knowing that he would be questioned about the altercation once he got there. (See *U.S. v. Kim* (9th Cir. 2002) 292 F.3d 969, 974-975 ["If the police ask—not order—someone to speak to them and that person comes to the police station, voluntarily, precisely to do so, the individual is likely to expect that he can end the encounter"]; cf. *People v. Boyer* (1989) 48 Cal.3d 247, 263-264, 268 [police forcibly prevented defendant from leaving his home before securing his "consent" to accompany them to the police station for an interview], disapproved on another ground in *People v. Stansbury* (1995) 9 Cal.4th 824, 830, fn. 1.)

Konopa's request to patsearch Molina for weapons before he allowed him to get in the patrol car and then the detective's act of essentially locking Molina in the car during the trip to the sheriff's department does not change our conclusion. (*California v. Beheler* (1983) 463 U.S. 1121, 1122, 1125 [*Miranda* warnings not warranted even though suspect was the target of a police investigation, had accompanied the police, and was ultimately questioned at the station house]; see *U.S. v. Crawford, supra*, 372 F.3d at p. 1059.)

We also reject Molina's arguments directed at the conduct of the interview. He asserts the interview became custodial either when Martinez told him to stay in the room or when the detective confronted him with "evidence" of his guilt. But the record shows that when Martinez first left the room, he asked Molina to wait, and Molina agreed to wait for the detective's return. When Martinez returned, he repeated that Molina was not under arrest, and Molina voluntarily agreed to continue the interview. Martinez's use of a ruse or ploy in his effort to elicit incriminating responses "has nothing to do with whether [Molina] was in custody for purpose of the *Miranda* rule." (*Oregon v.*



*Mathiason* (1977) 429 U.S. 492, 496; see also *California v. Beheler*, *supra*, 463 U.S. at pp. 1123-1125 [defendant considered a prime suspect was not in custody where police confronted him with false statements of incriminating evidence].) Martinez’s statements that he thought Molina was lying might have been confrontational, but a “confrontational moment in an otherwise cordial interview is not determinative [of custody] in a ‘totality of the circumstances’ analysis.” (*U.S. v. Bassignani*, *supra*, 560 F.3d at p. 995, fn. 8; cf. *U.S. v. Beraun-Panez* (9th Cir. 1987) 812 F.2d 578, 579 [combination of deceptive factors including officers’ demand to know why defendant was lying contributed to finding defendant was psychologically restrained]; *United States v. Wauneka* (9th Cir. 1985) 770 F.2d 1434, 1439 [four or five officers questioned defendant, and he was told he provided information only the perpetrator would know and that he better tell the truth].)

There is no evidence that Martinez acted in an intimidating or coercive fashion. Martinez did not threaten or promise Molina that he would get anything in return for his cooperation. Although Martinez did not explicitly tell Molina that he was free to leave, neither did he treat Molina as if he was under arrest or otherwise place any limits on his ability to terminate the interview and be taken home by the officers. Each time a round of questioning began, the detective confirmed that Molina was voluntarily cooperating, and the interview lasted approximately one hour. (Cf. *People v. Aguilera* (1996) 51 Cal.App.4th 1151, 1163-1164 [defendant subjected to two-hour “tag team” interrogation and was told he would not be taken home until he told the truth, and would not be allowed to leave if the officers had to interview an alleged alibi witness].)

Finally, Molina’s arrest at the end of the interview does not support a finding that he was earlier in custody. Although our inquiry is objective—we consider what a reasonable person in Molina’s position would have felt—Molina’s apparent surprise that he was being arrested supports the conclusion that a reasonable person would not have thought himself to have been earlier in custody during the interview.

Our application of the five factors the federal courts consider when determining whether an interrogation is custodial confirms that the trial court correctly denied

Molina's motion to suppress. (See *U.S. v. Bassignani*, *supra*, 560 F.3d at p. 994.) There was nothing especially harsh or directive in the officers' approach to Molina or their request that he come to the sheriff's department for questioning. There is no doubt that Molina was confronted with evidence. He was told that someone saw him by the bridge, and that DNA extracted from the victim could be used against him. And, like many interviews in the reported cases, this one took place in an interview room at the sheriff's department. However, the location does not convince us it was held in a custodial setting. Although the door to the room was closed, it was never locked and the alarm on the door was not activated. Molina repeatedly confirmed that his cooperation was voluntary and that he understood he was not under arrest. The interview was not unreasonably lengthy and took approximately one hour. There is nothing to suggest that undue pressure was applied to coerce Molina to talk. He was not threatened or promised anything in return for his cooperation. Thus, our independent review of the totality of these circumstances leads us to conclude that Molina was not in custody when he spoke with Detective Martinez, and therefore, *Miranda* warnings were not needed at any time before his arrest. Consequently, we conclude that Molina's statements were properly admitted into evidence.

### **DISPOSITION**

The judgment is affirmed.

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Siggins, J.

We concur:

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Pollak, Acting P.J.

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Jenkins, J.